

Kevin M. McDonough  
**LATHAM & WATKINS LLP**  
885 Third Avenue  
New York, NY 10022-4834  
Telephone: (212) 906-1200  
Facsimile: (212) 751-4864  
kevin.mcdonough@lw.com

Allen M. Gardner (*PHV* forthcoming)  
Sarah M. Gragert (*PHV* forthcoming)  
**LATHAM & WATKINS LLP**  
555 Eleventh Street, N.W., Suite 1000  
Washington, D.C. 20004  
Telephone: (202) 637-2200  
Facsimile: (202) 637-2201  
allen.gardner@lw.com  
sarah.gragert@lw.com

*Attorneys for Plaintiff Pacira  
BioSciences, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

PACIRA BIOSCIENCES, INC.,

Plaintiff,

v.

AMERICAN SOCIETY OF  
ANESTHESIOLOGISTS, INC., et al.,

Defendants.

Civil Action No. 2:21 Civ. 09264

**Oral Argument Requested**

**MOTION DAY:** May 17, 2021

**DECLARATION OF SARAH M. GRAGERT IN SUPPORT OF  
PLAINTIFF PACIRA BIOSCIENCES, INC.'S MOTION FOR  
PRELIMINARY INJUNCTION**

I, Sarah M. Gragert, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 as follows:

1. I am a counsel of the law firm Latham & Watkins LLP, 555 11th St. NW, Washington, D.C. 20004, counsel to Plaintiff Pacira BioSciences, Inc. (“Pacira”) in the above-captioned matter. I am admitted to the Bars of Maryland and the District of Columbia, and my *pro hac vice* admission to this Court is pending.
2. I submit this Declaration in support of Pacira’s Motion for Preliminary Injunction in the above-captioned action. I am familiar with all of the facts and circumstances set forth herein.
3. Attached as Exhibit 1 to the Motion for Preliminary Injunction is a true and correct copy of the report of Dr. Thomas D. Trikalinos, M.D., Ph.D.
4. Attached as Exhibit 2 to the Motion for Preliminary Injunction is a true and correct copy of the report of Dr. Mary DiGiorgi, M.D., MPH.
5. Attached as Exhibit 3 to the Motion for Preliminary Injunction is a true and correct copy of the declaration of Dr. Charles Mehlman, D.O., MPH.
6. Attached as Exhibit 4 to the Motion for Preliminary Injunction is a true and correct copy of the statement of Dr. William Rayburn, M.D.
7. Attached as Exhibit 5 to the Motion for Preliminary Injunction is a true and correct copy of the declaration of Dr. Catherine Vandepitte, M.D., Ph.D.
8. Attached as Exhibit 6 to the Motion for Preliminary Injunction is a true and correct copy of the declaration of Dr. Scott Kreger, M.D.

9. Attached as Exhibit 7 to the Motion for Preliminary Injunction is a true and correct copy of the declaration of Justin Sherrod.

10. Attached as Exhibit 8 to the Motion for Preliminary Injunction is a true and correct copy of the declaration of Daryl Gaugler.

11. Attached as Exhibit 9 to the Motion for Preliminary Injunction is a true and correct copy of an article authored by Defendant Dr. Evan Kharasch et al. entitled *Methadone and Ketamine: Boosting Benefits and Still More to Learn*, and dated May 2021.

12. Attached as Exhibit 10 to the Motion for Preliminary Injunction is a true and correct copy of an article authored by Defendant Dr. Evan Kharasch et al. entitled *Opioid-free Anesthesia: Time to Regain Our Balance*, and dated April 2021.

13. Attached as Exhibit 11 to the Motion for Preliminary Injunction is a true and correct copy of an article authored by Dr. Glenn S. Murphy et al. entitled *Perioperative Methadone and Ketamine for Postoperative Pain Control in Spinal Surgical Patients*, and dated February 2021.

14. Attached as Exhibit 12 to the Motion for Preliminary Injunction is a true and correct copy of an analysis by investment bank Cowen, dated April 6, 2021.

15. Attached as Exhibit 13 to the Motion for Preliminary Injunction is a true and correct copy of an email from Defendant Dr. Evan Kharasch to an anesthesiologist rejecting publication of a letter, dated February 8, 2021. To protect the confidentiality of the doctor's name, I am not identifying him here.

16. Attached as Exhibit 14 to the Motion for Preliminary Injunction is a true and correct copy of a screen grab of Defendant American Society of Anesthesiologists' website showing its most-viewed stories, dated February 18, 2021.

17. Attached as Exhibit 15 to the Motion for Preliminary Injunction is a true and correct copy of the January 2021 cover of Defendant American Society of Anesthesiologists' magazine *Anesthesiology*, dated January 2021.

18. Attached as Exhibit 16 to the Motion for Preliminary Injunction is a true and correct copy of the February 2021 cover of Defendant American Society of Anesthesiologists' magazine *Anesthesiology*, dated February 2021.

19. Attached as Exhibit 17 to the Motion for Preliminary Injunction is a true and correct copy of a screen grab of an email from the president of Defendant American Society of Anesthesiologists, dated April 12, 2021.

20. Attached as Exhibit 18 to the Motion for Preliminary Injunction is a true and correct copy of excerpts of a meeting transcript from the Food & Drug Administration's Anesthetic and Analgesic Drug Products Advisory Committee, dated February 15, 2018.

21. Attached as Exhibit 19 to the Motion for Preliminary Injunction is a true and correct copy of an email from an anesthesiologist to Pacira, dated February 6, 2021. To protect the confidentiality of the doctor's name, I am not identifying him here.

22. Attached as Exhibit 20 to the Motion for Preliminary Injunction is a true and correct copy of a screen grab of an invite from Pacira competitor AVANOS to an event, dated March 17, 2021.

Dated: April 14, 2021  
Washington, District of Columbia

Respectfully submitted,



Sarah M. Gragert (*PHV* pending)  
of LATHAM & WATKINS LLP